

Testimony of Deputy Secretary of Labor, Steven Law, on Guest Worker Proposals

STATEMENT OF STEVEN LAW
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BEFORE THE
SUBCOMMITTEE ON IMMIGRATION,
BORDER SECURITY AND CITIZENSHIP
SENATE JUDICIARY COMMITTEE

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Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify today on the President's proposed Temporary Worker Program.

The President's proposal recognizes a reality of today's economy: there are millions of undocumented workers in the labor market filling jobs that are vital to our economy. The President's proposal for a new Temporary Worker Program will allow American businesses to hire needed workers to fill jobs for which there are no willing and available American workers. In addition, the proposal will bring undocumented workers into the mainstream economy, allowing them to more easily establish credit, invest, and purchase items like appliances, homes and automobiles. These purchases in turn will stimulate the nation's economy and create more jobs.

Principles of Immigration Reform

The President's proposal is based on several guiding principles:

- We must Protect the Homeland by Controlling Our Borders. The Temporary Worker Program should link to efforts to control our border through agreements with countries whose nationals participate in the program. It must support ongoing efforts to enhance homeland security.
- The Program Should Serve America's Economy by Matching Willing Workers with Willing Employers. When no American worker is available and willing to take a job, the program should provide a labor supply for American businesses. It should do so in a way that is clear, streamlined, and efficient so people can find jobs and employers can find workers in a timely manner.
- The Program Should Promote Compassion. Undocumented workers who had jobs in the United States as of January 7, 2004, when the President announced his proposal, should be eligible for temporary worker status to prevent exploitation. Participants would be issued a temporary worker card that will allow them to travel back and forth between their permanent home country and the U.S. without fear of being denied re-entry into America.
- The Program Should Provide Incentives for Workers to Return to their Home Country After Their Period of Work Has Concluded. The legal status granted by this program would last three years, with the possibility of renewal. During the temporary work period, it should allow movement across the U.S. borders so the worker can maintain roots and remain in close contact with family members in their home country. Incentives to return home also include receiving credit for U.S. employment in their home country's retirement system and tax deferred savings accounts.
- The Program Should Protect the Rights of Legal Immigrants. It should not reward with citizenship those who break America's laws. However, it should also not preclude a participant from obtaining green card

status through the existing process. It should not permit undocumented workers to gain an advantage over those who have followed the rules.

DOL's Role in the Temporary Worker Program

More specifically, I would like to speak with you today about the Department of Labor's role in the President's proposed Temporary Worker Program. While the details of the program will be developed with Congress, the Department most likely would be involved in helping American employers find the workers they need to keep the economy growing and carrying out our core mission of protecting all workers in America by vigorously and fairly enforcing our labor laws, including the right to fair wages and a healthy and safe work environment.

American Workers Come First

The President is committed to ensuring that every American who wants a job can find one. Under the President's proposal, employers would have to make reasonable efforts to find an American to fill a job before extending job offers to foreign workers.

The Department currently has a role in six visa programs: the employment-based permanent resident program; the H-1B program for temporary workers in professional occupations; the H-2A program for temporary or seasonal agricultural workers; the H-2B program for temporary non-agricultural or seasonal workers; the H-1C program for temporary registered nurses; and the D-1 program for foreign crewmembers who perform short-term longshore activities at U.S. ports.

The Department currently works with employers to obtain the information needed to approve or deny labor certifications. Depending on the visa program, labor certification is either a statutory or a regulatory requirement that employers must satisfy prior to petitioning the Department of Homeland Security to be allowed to bring workers into the country. Generally, employers must show that they have tested the labor market and that no American workers are available to fill job vacancies. The type of labor market test required varies depending on the visa program applied for. For example, under the Permanent and H-2B programs, the employer advertises the job and interviews all applicants who apply and meet the employer's job requirements, and provides a report explaining why any U.S. workers who applied were rejected for lawful reasons. Employers must also offer the prevailing wages and working conditions of similarly situated U.S. workers. The H-2A program requires that employers place newspaper and radio advertising in areas of expected labor supply, and hire any qualified and eligible U.S. worker who applies for a job until fifty percent of the period of the work contract has elapsed.

In recent years, we have been working to make the Department of Labor's role in the visa application process more efficient. We are striving to reduce processing times by permitting employers to do more of the required recruitment of U.S. workers before they file their application with us, rather than beginning the process after they file their labor certification application. The employer then would attest that all of the required steps have been fulfilled. To ensure compliance with the certification process, DOL would conduct spot audits as needed as well as random post-adjudication audits. We are also working to make it possible for employers to file applications electronically, thus speeding up the process considerably while still maintaining the program's integrity.

Under the President's proposal, eligible workers should have the freedom to move between employers, as long as each new employer has met the test of being unable to find willing and available American workers for the particular job. DOL is committed to minimizing fraud in the work-based visa programs, and our Inspector General has conducted a series of investigations on this issue to help us identify and address vulnerability and fraudulent activities. We look forward to working with Congress to determine the appropriate labor market test for the Temporary Worker Program, and to adopt strong audit and penalty provisions to ensure that employers and workers follow the rules.

Enforcement of the Labor Laws

As the President has indicated, under the current system we know that millions of hard-working men and women must live in fear and insecurity in a massive undocumented economy. Under the Temporary Worker Program, previously undocumented workers would be able to live legally and openly. They could feel free to candidly talk with government authorities about unfair or unsafe workplace conditions without fear of being deported.

One of the enforcement strategies of the Department of Labor has been to focus compliance resources on low-wage industries. These industries often have high numbers of immigrant workers who are vulnerable to exploitation. Typically, low-wage immigrant workers are reluctant to complain to Government authorities when their rights are violated. DOL employs targeted enforcement and compliance assistance to workers and employers to better ensure that the rights of these vulnerable workers are protected. In addition, in the FY 2005 budget we are proposing legislation to increase civil monetary penalties for violations of labor laws administered by the Department's Employment Standards Administration and Mine Safety and Health Administration. The proposal is intended to signal to employers that we absolutely refuse to tolerate repeated or egregious violations of the labor laws we enforce. As America's immigrant workforce grows, the Department of Labor will continue to increase its presence and accessibility to immigrant worker populations.

Reasonable Annual Increase of Legal Immigrants

The President has said that current limits on legal immigration are too low, and he has proposed an increase in the annual limit of legal immigrants allowed each year. Such an increase could result eventually in an increase in the number of permanent labor certification requests that the Department must consider.

The Department currently has a backlog in processing labor certification requests for the permanent program. To reduce this backlog, the Administration requested a significant increase in the funding level for such processing for FY 2004 and Congress appropriated most of that request for an increase of \$14.9 million over the FY 2003 level. In addition, to further address the backlog, in the FY 2005 budget request the Administration has proposed funding of an additional \$11.1 million over the FY 2004 funding level. These additional funds, if appropriated for FY 2005, would be used by the Department to hire primarily contractor staff to assist in the processing of backlogged cases using centralized processing centers.

In addition, we are preparing legislation for consideration by Congress that would permit the Department to charge a modest application fee to employers for using the Permanent Program. This fee would help offset the program's operating costs and assist us in reducing the current large backlog of cases.

The Department is also in the process of finalizing a new regulation for the Permanent Labor Certification Program to streamline the current inefficient, labor-intensive program. These new rules will make the process far more efficient and cost effective, and will eliminate state and federal duplication of effort, while maintaining program integrity. We expect that the revised process will significantly reduce the average processing time for new applications filed by employers beginning in FY 2005.

Mr. Chairman, we recognize that immigration reform is a complicated, difficult issue that often generates strong opinions and sentiments. However, we are confident that we can work together with the Members of this Committee and Congress to enact responsible immigration reforms that benefit our economy, our workers, and the nation as a whole. We look forward to joining you in this effort.

Thank you for the opportunity to testify on this important proposal. I would be happy to answer any questions you or the Members of the Subcommittee might have.